

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0529**

HENRY A. WAXMAN  
29TH DISTRICT, CALIFORNIA  
September 10, 2001

Mr. Bob Wright  
Chairman and Chief Executive Officer  
National Broadcasting Corporation  
30 Rockefeller Plaza  
New York, NY 10112

Dear Mr. Wright:

On Tuesday, September 5, a representative for NBC contacted my office to inform me that NBC was interested in reaching a constructive resolution of my request for the advertising and promotion videotapes relating to the conduct of Jack Welch on election night 2000. These are the videotapes that Andrew Lack, the president of NBC News, promised to provide during his congressional testimony in February. I appreciate and share your interest in resolving this matter and am hopeful we can reach a successful resolution. Two specific suggestions are set forth at the end of this letter.

When I asked Mr. Lack about the videotapes at the February 14 hearing, Mr. Lack stated: "You're certainly welcome to the tape. I know that advertising and promotion was around there. I don't know if there is a tape for you to look at." Since then, I have been disappointed by NBC's repeated refusal to honor Mr. Lack's sworn promise. And as I have learned more, I have become increasingly uncomfortable with the series of denials issued by NBC and Mr. Welch.

In a February 22, 2001, letter to me, Mr. Lack wrote:

As I testified during the House Commerce Committee's hearing last week, Jack Welch in no way intervened in, interfered with, or influenced NBC's election-night broadcast. ... I was there and in charge. It just didn't happen.<sup>1</sup>

More recently, Mr. Welch, who at the time was the head of the General Electric Company, which owns NBC, discounted reports that he became involved in NBC's election night process. On August 29, the Washington Post quoted Mr. Welch as saying: "The facts are, there was a roomful there of young kids cheering for Gore, and two or three of us cheering for

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<sup>1</sup>Letter from Andrew Lack to Rep. Henry Waxman (Feb. 22, 2001).

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George Bush. That's all that happened."<sup>2</sup> And just last week, Mr. Welch told the Associated Press: "It's just pure crazy. ... The idea that I had anything to do with the election is on its face for people with IQs over 50 beyond belief."<sup>3</sup>

Because of NBC's refusal to honor Mr. Lack's promise to provide the videotapes, and its failure to provide any information about Mr. Welch's actions, I have made careful efforts to learn more about how Mr. Welch acted. In doing so, I have focused exclusively on Mr. Welch's conduct; I have not questioned or investigated discussions among NBC news personnel.

This letter summarizes what I have discovered. It is based on a series of first-hand observations of Mr. Welch by credible individuals who were present at the NBC Decision Desk on election night.

These eyewitness accounts sharply conflict with NBC's and Jack Welch's statements. They show that the wall that is supposed to insulate NBC's news division from its corporate owner was breached on election night. According to eyewitnesses, Mr. Welch spent several hours at NBC's election night nerve center in frequent contact with the obscure but critical technical expert responsible for NBC's Decision Desk. At the pivotal moment on election night, Mr. Welch was observed interpreting raw data from Florida and providing his views about the data to the individual who makes NBC's election calls. In effect, the head of the corporate owner of NBC, an individual who was one of the most widely respected and powerful CEOs in the world, became a participant in NBC's analysis of the election results.

I agree with Mr. Lack's litmus test: the key issue is whether the corporate owner of NBC "intervened in, interfered with, or influenced" NBC news coverage. But as the account of the events of election night will indicate, the facts do not appear to support his conclusion.

In addition to describing what I have learned about Mr. Welch's conduct, I want to use this letter to explain why I believe responsible scrutiny is so important. There is a fundamental difference between investigating discussions among NBC news personnel and reviewing Mr. Welch's conduct. This is a situation where further examination is not only necessary, but enhances -- not diminishes -- the important goal of protecting the independence of the media.

## **I. Summary of Election-Night Events**

As you know, on the night of November 7 and in the early hours of November 8, 2000, NBC News conducted its election night broadcast coverage primarily from three areas on the third floor of NBC Studios in New York. The anchors and other broadcast reporters were located

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<sup>2</sup>*Names and Faces*, Washington Post (Aug. 29, 2001).

<sup>3</sup>*Welch Denies Election Night Call*, Associated Press (Sept. 6, 2001).

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in Studio 3B. NBC News staff, under the supervision of NBC News Director of Elections Sheldon R. Gawiser, analyzed incoming election data from the Voter News Service (VNS) and other sources at the Decision Desk in Studio 3K. Also on the third floor was the primary control room for the broadcast coverage.

These three studios, while close in proximity to each other, were physically separate. As a result, it was not possible for Tom Brokaw or other news reporters to observe any activities occurring at the Decision Desk. Similarly, it wasn't possible for Jeff Zucker, who was executive producer of the broadcast, Andrew Lack, or other senior officials who spent most of the night in the control room or elsewhere to visually monitor activities at the Decision Desk.

Five floors above the broadcast area, in the Saturday Night Live studio (Studio 8H), NBC hosted an election night party for General Electric's board of directors, select officers of the company, and their spouses. At this event, Jack Welch and other attendees had access to television monitors tuned to election news coverage and a number of computers. Some computers displayed the MSNBC website. Other computers displayed VNS data, which excluded VNS's election calls, but included information that was not available to the public or other NBC News staff. NBC News employees, including technical staff and NBC pages, were present in the studio.

During the party in Studio 8H, election developments were often greeted with boos and cheers. By the accounts of some who attended, this party began to wind down around 11 p.m.

Sometime after that point, Jack Welch and some others left Studio 8H and arrived at the NBC Decision Desk at Studio 3K. As you know, any visitors in the Decision Desk area -- which is the nerve center for actual election calls -- are extraordinarily unusual. As a matter of practice, the Decision Desk had been physically set apart from other NBC News operations and protected from intrusions. As I understand it, NBC treats its Decision Desk as a sacrosanct area that is used exclusively by the election analysts responsible for making network calls. It is understood that these technical experts are vested with important responsibilities that must be discharged honestly and with a fierce indifference to a particular outcome. Contrary to the implications of Mr. Welch's statements, cheering for candidates does not occur at the Decision Desk. The Decision Desk staff have one goal: to make election calls based solely on the merits, regardless of the impact on individual candidates.

Shortly after Mr. Welch arrived at the Decision Desk, he made clear his hope that George W. Bush would win the election. In fact, at one point he was heard saying to Dr. Gawiser: "How much would I have to pay you to call the race for Bush?" While this comment may have been made in jest, it clearly underscored Mr. Welch's and General Electric's vested interest in the outcome of the election.

According to those who were present at the Decision Desk (the number varied from 50-100 people throughout the early hours of November 8), Dr. Gawiser, who had the ultimate

responsibility for NBC's election calls, was distracted by Mr. Welch and the other visitors. Dr. Gawiser is supposed to be left alone to monitor the incoming data and confer with other analysts at the Decision Desk. But instead, Dr. Gawiser was called upon repeatedly to explain to Mr. Welch how the Decision Desk worked, how projection decisions were made, and how the race was progressing.

Moreover, in another apparent deviation from past practice, Mr. Welch and others who did not have Decision Desk responsibilities were given access to VNS data that was limited for use by the Decision Desk. This raw VNS data included information -- such as VNS judgment calls on races -- that was not available to the public or even to other NBC News personnel, including anchors, other on-air reporters, writers, and producers.

Efforts were reportedly made during this time period to escort Mr. Welch away from the Decision Desk. These efforts did not succeed. Mr. Welch remained present at the Decision Desk for approximately two hours, repeatedly distracting Dr. Gawiser and his team of analysts from their critical responsibilities.

At some point, after Dr. Gawiser had apparently taught Mr. Welch how to interpret raw vote counts, Mr. Welch spent time at a computer monitor that was displaying the incoming raw vote count in Florida. Mr. Welch apparently concluded that the numbers on his screen indicated that George W. Bush had won Florida. He communicated his views to Dr. Gawiser, who then reportedly conferred with another Decision Desk staff member about the results.

At almost this same time, John Ellis -- George W. Bush's cousin and Fox News's senior decision desk official -- called both the Florida and national election for George W. Bush. Immediately after this announcement, Mr. Welch was observed standing behind Dr. Gawiser with a hand on his shoulder, asking why NBC was not also calling the election for Mr. Bush.

Shortly after this, Dr. Gawiser informed the control room that NBC would declare George W. Bush the winner. NBC subsequently did so.

There were a number of cameras recording activity at the Decision Desk at different points in the evening, including a live camera crew from MSNBC, a camera crew from Advertising and Promotions (A&P), and a number of personal video and still cameras. These videotapes are likely to confirm Mr. Welch's extensive involvement at the Decision Desk and to provide other important details about Mr. Welch's actions.

## **II. Implications of Mr. Welch's Actions**

This summary of Mr. Welch's actions raises very troubling issues. Mr. Welch's presence was grossly inappropriate and a blatant violation of the separation that must exist between NBC's News Division and its corporate management.

NBC and the other television networks are special entities. They exist because they have the use -- without charge -- of the public airwaves. In return, the networks have the duty of serving the public interest. That brings with it special obligations, including the duty to earn the public's confidence by adhering to the highest standards of conduct. To do that, there must always be an inviolate line between the news division and any corporate interests a network or its parent company might have.

Mr. Welch's election night actions raise an important issue: Does corporate ownership of network news organizations threaten the independence of the news media? If the summary is accurate, the wall that should separate the corporate owner from the news division was indisputably violated on election night at NBC. Regardless of Mr. Welch's intent, or whether his presence changed NBC's decision or its timing, Mr. Welch appears to have become part of NBC's election night activities, reviewing raw voting data and discussing the significance of the raw data with NBC's Decision Desk personnel. And he did so on a matter of tremendous national significance in which he had a strong personal interest.

The broadcast airwaves are a scarce resource that is allocated by the federal government. As the Supreme Court has recognized, the federal government has a substantial interest in ensuring that this scarce resource is used to provide adequate and fair coverage of public issues.<sup>4</sup> The incidents that took place at NBC on election night raise the question whether our current system has sufficient safeguards to achieve this objective. If broadcast news networks are not truly independent, if they are not able to operate without intrusion from their corporate owners, confidence in the adequacy and fairness of news coverage will be significantly eroded.

NBC has argued that Mr. Welch did not "influence" NBC's decision to call the election for Mr. Bush. But this is simply too narrow a test. Mr. Lack, the president of NBC News, was correct when he recognized that Mr. Welch should not "intervene in, interfere with, or influence" NBC's election night broadcast. Ultimately, the question of Mr. Welch's "influence" may be hard to assess. But his "intervention" and his "interference" are not. According to eyewitnesses, Mr. Welch, the CEO of NBC's corporate parent, became a participant in NBC's election analysis, thereby violating the bright line that should separate corporate management from news coverage.

I want to make it clear that Mr. Welch's reported conduct in no way impugns the integrity or independence of Tom Brokaw, Tim Russert, or the other news reporters at NBC. There is no evidence that they had any knowledge of Mr. Welch's actions or even his presence at the Decision Desk. As I mentioned earlier, the Decision Desk is physically separate from the broadcast studio, which makes it impossible for news broadcasters and news reporters to observe the Decision Desk.

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<sup>4</sup>See *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

### III. Why Appropriate Scrutiny Is Necessary

Some have suggested that this is an issue that should not be investigated by a member of Congress because a congressional investigation would violate the First Amendment. I take these concerns seriously because I have been an extremely strong defender of the First Amendment. Indeed, I was a plaintiff in the first Supreme Court case that ever struck down a federal regulation of the broadcast media on First Amendment grounds.<sup>5</sup> But I could not disagree more strongly with the assertion that a congressional investigation jeopardizes the First Amendment. To the contrary, this is an instance where investigation may be necessary to preserve the independence of the media.

The issue of corporate control over the news media has been the subject of congressional hearings for years.<sup>6</sup> Especially in the case of broadcast media, which use scarce broadcast spectrum, Congress has a strong and compelling interest in ensuring the media's independence. But there is no way that Congress can effectively safeguard the independence of broadcast media unless Congress is able to examine threats to the independence of major news outlets, such as the actions of Mr. Welch on election night.

While Congress' interest in investigating Mr. Welch's role on election night is compelling, NBC does not have a valid interest in shielding Mr. Welch from scrutiny. The Supreme Court has held that a federal grand jury can compel journalists to testify about confidential news sources,<sup>7</sup> and that the police can search news offices.<sup>8</sup> But these serious

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<sup>5</sup>*See id.* In the *League of Women Voters* case, I joined the owner of public broadcast stations and others who challenged the constitutionality of a statutory provision, section 399 of the Public Broadcasting Act of 1967, that prohibited public broadcasters from "editorializing." The Supreme Court agreed that section 399 violated the First Amendment because it was specifically directed a form of speech, the expression of editorial opinions, and was not "narrowly tailored to further a substantial governmental interest, such as ensuring adequate and balanced coverage of public issues."

<sup>6</sup>*See, e.g.,* House Committee on Energy and Commerce, *Hearing on Media Mergers and Takeovers: The FCC and the Public Interest*, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1985); Senate Committee on the Judiciary, Subcommittee on Antitrust, Business Rights, and Competition, *Hearing on the Viacom/CBS Merger: Media Competition and Consolidation in the New Millennium*, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1999); House Committee on Commerce, Subcommittee on Telecommunications, Trade, and Consumer Protection, *Hearing on the Telecommunications Act of 2000*, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2000).

<sup>7</sup>*See Branzburg v. Hayes*, 408 U.S. 665, 690 (1972).

<sup>8</sup>*See Zurcher v. Stanford Daily*, 436 U.S. 547, 566 (1978).

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intrusions into the news media, while permissible under the First Amendment, are not implicated here.

I have not tried to investigate the identity of NBC's news sources, and I have not sought to learn the content of discussions between NBC journalists. The focus of my investigation has been the actions of Mr. Welch, the chief executive of General Electric. Mr. Welch is not a journalist, a news analyst, or a part of the NBC news division. His actions have little, if any, entitlement to the First Amendment protections belonging to the news media.

Investigating Mr. Welch's actions doesn't threaten the First Amendment. To the contrary, it strengthens the freedom of the media by helping to restore the wall that should exist between the news media and its corporate owners.

Fundamentally, the issue that divides us is not who investigates Mr. Welch's actions, but whether his actions will be investigated at all. My objective at the February 14 hearing was to either verify or debunk a persistent and troubling rumor. In response, NBC has consistently denied that any inappropriate conduct occurred. Since I first raised this matter, the president of NBC News has said that this issue is "just a dopey rumor, truly dopey"<sup>9</sup> and that "these 'rumors' are simply absurd."<sup>10</sup> Just last month, NBC's spokesperson said, "I think most everyone knows there just isn't anything to this. This is about a baseless rumor that has already gotten more attention than it deserves."<sup>11</sup>

I have great respect for NBC and the integrity of its news division. That's why I am particularly surprised that at no point has the network demonstrated any genuine interest in finding out what Mr. Welch did on election night. The videotapes, which could shed enormous light on Mr. Welch's conduct, have been withheld. Even the basic step of conducting an independent and rigorous internal review of Mr. Welch's role -- such as NBC conducted after General Motors accused Dateline of rigging a GM pickup truck to explode in 1992 -- has not been initiated.

Instead, NBC's legal department has acted defensively, even providing "guidance" to network employees in the event that they were contacted by my staff.

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<sup>9</sup>House Committee on Energy and Commerce, *Hearing on Election Night Coverage by the Networks*, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess., 125 (Feb. 14, 2001).

<sup>10</sup>Letter from Andrew Lack to Rep. Henry Waxman (July 31, 2001).

<sup>11</sup>*NBC Balks at Sharing Election Night Tapes*, Los Angeles Times (Aug. 8, 2001).

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Understandably, NBC may find it awkward to investigate the former CEO of its parent company. But as a news network, you know better than anyone that protecting Mr. Welch from scrutiny does not serve the public interest. If this summary of election night is accurate, as I believe it is, this issue needs to be examined and aired publicly, not swept under the rug. Mr. Welch and your organization are not entitled to immunity from scrutiny.

#### **IV. Conclusion**

If it's still not clear why Mr. Welch's conduct presents problems -- apart from the intrinsic value of protecting the independence of the news media -- I want to summarize this situation as plainly as possible.

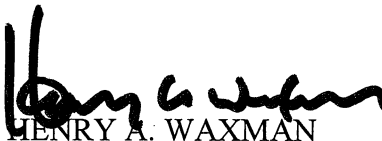
In this case, the boss of not just NBC but its parent company was involved. He was one of the best-known, widely respected, and powerful CEOs in the world. He spent several hours at NBC's Decision Desk on election night, distracting and communicating with Dr. Gawiser, the expert responsible for NBC's election night calls. And at the critical time on election night, Mr. Welch was observed interpreting the raw data from Florida and communicating with Dr. Gawiser.

This intervention and interference, regardless of the actual influence Mr. Welch had on the NBC call, is serious and demands a serious response. I believe that two steps should be taken:

1. NBC should provide full and complete disclosure of Jack Welch's conduct on election night, including making relevant videotapes publicly available.
2. NBC should explain the specific steps it will take to ensure that the bright line that should exist between corporate and news activities is not breached again in the future.

I am genuinely interested in resolving this matter with you. It is essential that the public be assured that the unfortunate mistakes of this past election night will never be repeated.

Sincerely,



HENRY A. WAXMAN  
Member of Congress

cc: The Honorable W.J. "Billy" Tauzin  
The Honorable John D. Dingell